

Species Committee shall make its recommendations to the MAFMC with respect to the measures necessary to assure that the ACLs are not exceeded. The MAFMC shall review these recommendations and, based on the recommendations and public comment, make recommendations to the Regional Administrator with respect to the measures necessary to assure that sector ACLs are not exceeded. Included in the recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the final rule. The Regional Administrator will review these recommendations and any recommendations of the ASMFC. After such review, the Regional Administrator will publish a proposed rule in the FEDERAL REGISTER to implement a commercial quota, a recreational harvest limit, and additional management measures for the commercial fishery. If the Regional Administrator determines that additional recreational measures are necessary to assure that the recreational sector ACL is not exceeded, he or she will publish a proposed rule in the FEDERAL REGISTER to implement additional management measures for the recreational fishery. After considering public comment, the Regional Administrator will publish a final rule in the FEDERAL REGISTER to implement the measures necessary to ensure that recreational sector ACL is not exceeded.

(c) *Distribution of annual commercial quota.* The black sea bass commercial quota will be allocated on a coastwide basis.

(d) *Research quota.* See § 648.21(g).

[76 FR 60636, Sept. 29, 2011, as amended at 76 FR 81850, Dec. 29, 2011]

**§ 648.143 Black sea bass Accountability Measures.**

(a) *Commercial sector fishery closure.* The Regional Administrator will monitor the harvest of commercial quota based on dealer reports, state data, and other available information. All black sea bass landed for sale in the states from North Carolina through Maine by a vessel with a moratorium permit issued under § 648.4(a)(7) shall be applied against the commercial annual coastwide quota, regardless of where

the black sea bass were harvested. All black sea bass harvested north of 35°15.3' N. lat., and landed for sale in the states from North Carolina through Maine by any vessel without a moratorium permit and fishing exclusively in state waters, will be counted against the quota by the state in which it is landed, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC. The Regional Administrator will determine the date on which the annual coastwide quota will have been harvested; beginning on that date and through the end of the calendar year, the EEZ north of 35°15.3' N. lat. will be closed to the possession of black sea bass. The Regional Administrator will publish notification in the FEDERAL REGISTER advising that, upon, and after, that date, no vessel may possess black sea bass in the EEZ north of 35°15.3' N. lat. during a closure, nor may vessels issued a moratorium permit land black sea bass during the closure. Individual states will have the responsibility to close their ports to landings of black sea bass during a closure, pursuant to the FMP for the black sea bass fishery adopted by the ASMFC.

(1) *Commercial ACL overage evaluation.* The commercial sector ACL will be evaluated based on a single-year examination of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the commercial sector ACL has been exceeded.

(2) *Commercial landings overage repayment.* Landings in excess of the annual coastwide quota will be deducted from the quota allocation for the following year in the final rule that establishes the annual quota. The overage deduction will be based on landings for the current year through September 30, and landings for the previous calendar year were not included when the overage deduction was made in the final rule that established the annual coastwide quota for the current year. If the Regional Administrator determines during the fishing year that any part of an overage deduction was based on erroneous landings data that were in excess of actual landings for the period concerned, he/she will restore the overage that was deducted in error to the

appropriate quota allocation. The Regional Administrator will publish notification in the FEDERAL REGISTER announcing the restoration.

(b) *Non-landing accountability measure.* In the event that the commercial ACL has been exceeded and the overage has not been accommodated through the landings-based AM, then the exact amount by which the commercial ACL was exceeded, in pounds, will be deducted, as soon as possible, from the applicable subsequent single fishing year commercial ACL.

(c) *Recreational ACL Evaluation.* The recreational sector ACL will be evaluated based on a 3-year moving average comparison of total catch (landings and dead discards). Both landings and dead discards will be evaluated in determining if the 3-year average recreational sector ACL has been exceeded. The 3-year moving average will be phased in over the first 3 years, beginning with 2012: Total recreational total catch from 2012 will be compared to the 2012 recreational sector ACL; the average total catch from both 2012 and 2013 will be compared to the average of the 2012 and 2013 recreational sector ACLs; the average total catch from 2012, 2013, and 2014 will be compared to the average of the 2012, 2013, and 2014 recreational sector ACLs and, for all subsequent years, the preceding 3-year average recreational total catch will be compared to the preceding 3-year average recreational sector ACL.

(d) *Recreational AMs.* If the recreational ACL is exceeded, then the following procedure will be followed:

(1) *If biomass is below the threshold, the stock is under rebuilding, or biological reference points are unknown.* If the most recent estimate of biomass is below the  $B_{MSY}$  threshold (i.e.,  $B/B_{MSY}$  is less than 0.5), the stock is under a rebuilding plan, or the biological reference points ( $B$  or  $B_{MSY}$ ) are unknown, and the recreational ACL has been exceeded, then the exact amount, in pounds, by which the most recent year's recreational catch estimate exceeded the most recent year's recreational ACL will be deducted in the following fishing year, or as soon as possible thereafter, once catch data are available, from the recreational ACT, as a single-year adjustment.

(2) *If biomass is above the threshold, but below the target, and the stock is not under rebuilding.* If the most recent estimate of biomass is above the biomass threshold ( $B/B_{MSY}$  is greater than 0.5), but below the biomass target ( $B/B_{MSY}$  is less than 1.0), and the stock is not under a rebuilding plan, then the following AMs will apply:

(i) *If the Recreational ACL has been exceeded.* If the Recreational ACL has been exceeded, then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(ii) *If the ABC has been exceeded.* If the ABC has been exceeded, then a single-year adjustment to the recreational ACT will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as described in paragraph (d)(2)(ii)(A) of this section. In addition, adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following year.

(A) *Adjustment to Recreational ACT.* If an adjustment to the following year's Recreational ACT is required, then the ACT will be reduced by the exact amount, in pounds, of the product of the overage, defined as the difference between the recreational catch and the recreational ACL, and the payback coefficient, as specified in paragraph (d)(2)(ii)(B) of this section.

(B) *Payback coefficient.* The payback coefficient is the difference between the most recent estimate of biomass and  $B_{MSY}$  (i.e.,  $B_{MSY} - B$ ) divided by one-half of  $B_{MSY}$ .

(3) *If biomass is above  $B_{MSY}$ .* If the most recent estimate of biomass is above  $B_{MSY}$  (i.e.,  $B/B_{MSY}$  is greater than 1.0), then adjustments to the recreational management measures, taking into account the performance of the measures and conditions that precipitated the overage, will be made in the following fishing year, or as soon as possible thereafter, once catch data are available, as a single-year adjustment.

(e) *State/Federal disconnect AM.* If the total catch, allowable landings, commercial quotas, and/or RHL measures adopted by the ASMFC Summer Flounder, Scup and Black Sea Bass Management Board and the MAFMC differ for a given fishing year, administrative action will be taken as soon as possible to revisit the respective recommendations of the two groups. The intent of this action shall be to achieve alignment through consistent state and Federal measures such that no differential effects occur to Federal permit holders.

[76 FR 60636, Sept. 29, 2011, as amended at 78 FR 76764, Dec. 19, 2013]

**§ 648.144 Black sea bass gear restrictions.**

(a) *Trawl gear restrictions*—(1) *General.*

(i) Otter trawlers whose owners are issued a black sea bass moratorium permit and that land or possess 500 lb (226.8 kg) or more of black sea bass from January 1 through March 31, or 100 lb (45.4 kg) or more of black sea bass from April 1 through December 31, must fish with nets that have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh applied throughout the codend for at least 75 continuous meshes forward of the terminus of the net, or for codends with less than 75 meshes, the entire net must have a minimum mesh size of 4.5-inch (11.43-cm) diamond mesh throughout.

(ii) Mesh sizes shall be measured pursuant to the procedure specified in § 648.104(a)(2).

(2) *Net modifications.* No vessel subject to this part shall use any device, gear, or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of the regulated portion of a trawl net except that one splitting strap and one bull rope (if present) consisting of line or rope no more than 3 inches (7.6 cm) in diameter may be used if such splitting strap and/or bull rope does not constrict, in any manner, the top of the regulated portion of the net, and one rope no greater than 0.75 inches (1.9 cm) in diameter extending the length of the net from the belly to the terminus of the codend along the top, bottom, and each side of the net. “Top of the regulated portion of the net”

means the 50 percent of the entire regulated portion of the net that (in a hypothetical situation) will not be in contact with the ocean bottom during a tow if the regulated portion of the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes shall not be considered part of the top of the regulated portion of a trawl net.

(3) *Mesh obstruction or constriction.* (i) A fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net, as defined in paragraph (a)(2) of this section, that obstructs the meshes of the net in any manner, or otherwise causes the size of the meshes of the net while in use to diminish to a size smaller than the minimum established pursuant to paragraph (a)(1)(i) of this section.

(ii) No person on any vessel may possess or fish with a net capable of catching black sea bass in which the bars entering or exiting the knots twist around each other.

(4) *Stowage of nets.* Otter trawl vessels subject to the minimum mesh-size requirement of paragraph (a)(1)(i) of this section may not have “available for immediate use” any net or any piece of net that does not meet the minimum mesh size requirement, or any net, or any piece of net, with mesh that is rigged in a manner that is inconsistent with the minimum mesh size requirement. Nets must be stowed and not available for immediate use as defined in § 648.2.

(5) *Roller gear.* Rollers used in roller rig or rock hopper trawl gear shall be no larger than 18 inches (45.7 cm) in diameter.

(b) *Pot and trap gear restrictions*—(1) *Gear marking.* The owner of a vessel issued a black sea bass moratorium permit must mark all black sea bass pots or traps with the vessel’s USCG documentation number or state registration number.

(2) All black sea bass traps or pots must have two escape vents placed in lower corners of the parlor portion of the pot or trap that each comply with one of the following minimum size requirements: 1.375 inches by 5.75 inches (3.49 cm by 14.61 cm); a circular vent of 2.5 inches (6.4 cm) in diameter; or a